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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

DATE: **JAN 11 2013** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER: [REDACTED]

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record must submit the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The date of filing is not the date of submission, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the service center director issued the decision on April 19, 2011 by facsimile, not mail. It is noted that the service center director properly gave notice to the petitioner that it had 30 days to file the appeal, as the denial was sent via facsimile. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Although the petitioner dated the Form I-290B May 18, 2011, it was not received by the service center until Friday, May 20, 2011, or 31 days after the decision was issued. Accordingly, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the Texas Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

Furthermore, for the reasons discussed below, even if the appeal had been timely filed, it would have been summarily dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A). The director's decision sufficiently discussed the deficiencies in the petition.

On appeal, the petitioner states "My brief and/or additional evidence will be submitted to [the] AAO within 30 days." The appeal was filed on May 20, 2011. As of this date, more than 19 months later, the AAO has received nothing further.

The petitioner's statement does not specifically challenge any of the director's findings or point to specific errors in the director's analyses. The regulation at 8 C.F.R. § 103.3(a)(1)(v) provides that "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal." In this matter, the petitioner has not identified as a proper basis for the appeal an erroneous

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conclusion of law or a statement of fact in the director's decision. Had the appeal been timely filed, the appeal would have been summarily dismissed.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.